

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Ameren Illinois Company d/b/a Ameren Illinois)	
)	ICC Docket No. 11-0279
Proposed General Increase in Electric Delivery)	
Service Rates)	
)	consolidated with
Ameren Illinois Company d/b/a Ameren Illinois)	
)	ICC Docket No. 11-0282
Proposed General Increase in Natural Gas Rates.)	

INITIAL BRIEF

On behalf of

RETAIL GAS SUPPLIERS

Consisting of

**Interstate Gas Supply of Illinois, Inc.
Dominion Retail, Inc.**

Christopher J. Townsend
Christopher N. Skey
Michael R. Strong
DLA Piper LLP (US)
203 N. LaSalle Street, Suite 1900
Chicago, IL 60601
christopher.townsend@dlapiper.com
christopher.skey@dlapiper.com
michael.strong@dlapiper.com

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INITIAL BRIEF OF THE RETAIL GAS SUPPLIERS

The Retail Gas Suppliers (“RGS”), consisting of Interstate Gas Supply of Illinois, Inc. (“IGS”) and Dominion Retail, Inc. (“Dominion”), by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Admin. Code 200.800), respectfully submits its Initial Brief in the instant proceeding addressing the proposed general increase in gas rates of Ameren Illinois Company d/b/a Ameren Illinois (“Ameren”).

I.

INTRODUCTION

A. Overview

This proceeding presents the Commission with an opportunity to advance its well-established policies favoring development of competition and accurate cost assignment. The lack of a competitive market for Ameren residential natural gas customers stands as an anomaly in Illinois. The Commission has overseen the development of competition for similarly situated natural gas and electric residential customers in *all* of the other major public utility service territories within the state. Thus, Ameren’s residential natural gas customers stand alone as the

only group of customers that lacks access to a competitive energy choice program among major customer groups served by Illinois public utilities.

This situation is particularly odd because residential customers in the Ameren service territory have access to a mass market electric choice program -- complete with a Commission-sponsored price-to-compare, a Commission-approved Purchase of Receivables (“POR”) tariff, and robust and increasing consumer protections -- but have no choice regarding their natural gas supplier. (*See, e.g.*, ICC Docket Nos. 08-0619 to -0621 (cons.) (Ameren implementing POR for electric markets); ICC Docket No. 09-0592 (expanding pre-existing consumer protections); PlugInIllinois website (available at <http://www.pluginillinois.org>).) Furthermore, according to utility data reported to the Commission, nearly 275,000 Northern Illinois residential gas customers in the Nicor and Peoples/North Shore service territories bought natural gas from alternative suppliers -- an opportunity that not a single residential customer in Ameren’s territory is presently permitted to access. (*See* Consumer Services Division 2010 Annual Report at 22 (available at <http://www.icc.illinois.gov/reports/Results.aspx?t=7>).)

Importantly, Ameren itself repeatedly has stated through testimony and Data Request Responses that it does not oppose development of a mass market natural gas choice program, and that it would embrace and participate in a workshop process to develop that program. (*See, e.g.*, Ameren Ex. 35.0 Rev. at 18:327; Ameren Responses to IGS Data Requests 2.01 (RGS Cross Ex. 2) and 5.01 (RGS Cross Ex. 3); Tr. 77:16-20.) Similarly, the Citizens Utility Board (“CUB”) has stated that it does not oppose development of a mass market natural gas choice program in Ameren’s service territory, and that it does not oppose a workshop process to work on the details of that program. (*See, e.g.*, CUB Response to Data Request RGS 4.01 (made part of the record as RGS Cross Ex. 10).) Of course, the workshop process has been used by the Commission in

the past as a mechanism to permit all interested stakeholders to work through details associated with choice programs, most recently in the 2009 Peoples/North Shore Rate Case.

Accordingly, RGS respectfully requests that the Commission direct Ameren to implement a mass market natural gas choice program and order Staff and interested stakeholders to conduct a workshop process to work out the details of the program, at the conclusion of which tariffs should be submitted to the Commission for approval.

1. Commission Policy Favors Development Of Competition

Over the last decade, the Commission has articulated a strong, long-standing policy favoring competition.

In the Commission's Order originally expanding Nicor Gas's small volume customer choice program to all eligible customers, the Commission held:

The expansion of the revised Program will provide all of Nicor Gas' customers with the ability to choose their gas supplier, which should facilitate gas service unbundling and foster competition. Hopefully, the increased competition will result in the development of new services and lower costs for customers.

(ICC Docket Nos. 00-0620/-0621 (cons.) Final Order dated July 5, 2001 at 13; *see also* ICC Docket Nos. 01-0469/-0470 (cons.) Final Order dated March 5, 2002 at 25 (approving a program because its effect is "enhancing the development of a competitive market").) The Commission further established the primacy of the policy favoring choice, when noting its equality with the requirement that utilities recover their costs:

We agree that payment of overdue regulated charges is paramount to insure continued service to customers. However, it is of equal importance that suppliers remain in the market to allow competition to flourish.

(*Id.* at 80.) The Commission reiterated the importance of its policy favoring competition in the Peoples/North Shore 2007 Rate Case, in which the Commission refused to alter the payment priority rule that it ordered for Nicor, and later Peoples/North Shore, stating that changing the

priority rules would have and “incrementally adverse impact on supply competition . . . [t]hat would be inconsistent with our policy of expanding customer choice.” (ICC Docket Nos. 07-0241/-0242 (cons.), Final Order dated February 5, 2008 at 304.) The Commission concluded: “We are also committed to encouraging competitive gas supply, so that customers enjoy the benefits competition can provide.” (ICC Docket Nos. 07-0241/-0242 (cons.) Final Order dated February 5, 2008 at 278.) Thus, the Commission repeatedly has expanded on, improved, or otherwise supported competitive residential natural gas markets. Furthermore, in the Commission’s annual reports on natural gas choice pursuant to a since-updated version of Section 19-130 of the Public Utilities Act, the Commission articulated its policy favoring competition. (*See* 220 ILCS 5/10-130 (2003); *see also* Annual Report on the Development of Natural Gas Markets in Illinois dated July, 2007 at 6-9 (discussing history and benefits of small volume choice programs); Annual Report on the Development of Natural Gas Markets in Illinois dated July, 2005 at 9-10 (same).)

RGS expert witness James L. Crist provided analysis of the 2007 and 2005 Commission reports, including descriptions of the Commission’s findings about the benefits of competition for mass market customers. (*See, e.g.*, RGS Ex. 2.0C at 9:219-11:280; RGS Ex. 1.0C at 12:267-13:276, 14:300-311, 15:326-338.) As Mr. Crist noted:

[T]he Commission has determined that “Small volume transportation programs for small commercial and residential customers are an important component of the Illinois retail natural gas markets.”

(RGS Ex. 1.0C at 15:331-334 (quoting 2007 Annual Report at 6).)

As a natural next step in advancing its pro-competitive agenda, the Commission should direct Ameren to implement a mass market natural gas choice program. Ameren does not oppose implementation of a choice program, and has indicated that it will participate in a workshop process with all interested stakeholders to work out the contours and details of that

choice program. CUB similarly does not oppose a choice program and accepts the workshop approach as an appropriate mechanism to develop the details for the program.

2. Ameren Residential Natural Gas Customers Are The Last In Major Utility Service Territories Still Waiting For Choice

Ameren's residential natural gas customers are the last customer group among Illinois utility customers in the "big four" Illinois energy utilities (Ameren, Nicor, Peoples/North Shore, and ComEd) that do not have access to choice. Residential customers in the Nicor Gas and Peoples/North Shore service territories have had access to the competitive market for many years. (*See, e.g.*, ICC Docket Nos. 00-0620/-0621 (cons.) Final Order dated July 5, 2001 (approving expansion of mass market choice program to all customers in Nicor service territory); ICC Docket Nos. 01-0469/-0470 (cons.) Final Order dated March 5, 2002 (same for Peoples/North Shore).) In addition, Ameren's non-residential natural gas customers all have access to the competitive market, although there is no separate program for smaller commercial customers as there is in other natural gas utility service territories. (*See, e.g.*, Tr. 556:10-12 (Ameren had non-residential transportation program since 1980s).) RGS respectfully requests that the Commission resolve this anomaly by establishing a choice program that will allow Ameren residential natural gas customers to take advantage of the competitive market -- a right possessed by all similarly situated customers in the other large public utility territories throughout the state.

In addition, Ameren's own residential electric customers have access to choice. Paradoxically, an Ameren residential customer can take service from a competitive electricity supplier but that same customer cannot take service from a competitive natural gas supplier. (*See, e.g.*, Tr. 75:19-76:22.) That residential customer's competitive electric supplier will be able to take advantage of Purchase of Receivables, which (as described in greater detail below)

would further enhance the residential electric customer's benefits from competition. (*See, e.g.*, ICC Docket Nos. 08-0619 to -0621 (cons.)) In addition, the Commission runs a website, PlugInIllinois, that facilitates apples-to-apples comparisons of competitive electric suppliers and utility prices. (*See* <http://www.pluginillinois.org>.) Residential electricity customers are protected by evolving and strengthening consumer protections that the Commission has developed and is still developing in multiple dockets, including proposed Part 412 and proposed revised Part 453 Rules. (*See, e.g.*, ICC Docket No. 09-0592.)

RGS urges the Commission to approve creation of a mass market natural gas choice program that will unlock the benefits of competition Ameren's residential customers.

**3. By Ordering Workshops To
Address The Framework Provided By RGS Witness
Mr. Crist, The Commission Can Support An Equitable
Competitive Environment For Ameren Mass Market Customers**

In order to open the competitive natural gas market to Ameren's residential customers and advance the Commission's clear policy favoring competition, RGS respectfully recommends that the Commission undertake the following steps:

- **Order workshops to begin no later than one month after the Final Order lasting no more than six months to develop a tariff that Ameren will then submit to the Commission for approval.** The workshops should be open to all interested parties, and include representatives from Ameren and Staff. Six months would be more than sufficient; the Post '06 Initiative workshops (under the leadership of Commissioner O'Connell-Diaz) themselves resolved a vast range of issues of first impression in less than six months and involved a robust discussion from a wide range of participants. (*See* RGS Ex. 2.0C at 21:511-521.)
- **Set the agenda for the workshops to cover filling in the details of RGS's proposal.** Because RGS was the only party to provide an outline for the necessary components of mass market natural gas choice, the Commission should require RGS's proposal -- as set forth in RGS witness Mr. Crist's testimony and Exhibits RGS 2.2 and 2.3 -- to serve as the starting point for all discussions. (*See, e.g.*, RGS Ex. 2.0C at 21:507-510, 23:561-567.) The Commission took a similar approach in the Peoples/North Shore 2009 Rate Case, which produced positive results. (*See* RGS Ex. 2.0C at 21:525-521-22:554.)

- **Reject any calls for a delay.** Both Ameren and CUB have indicated their readiness to proceed with a workshop process. It appears that Staff opposes initiating a workshop process now. However, neither Staff nor any other party has provided a legitimate basis for the Commission to ignore the glaring exception in the Illinois choice markets and develop Ameren residential natural gas customers access to alternative natural gas suppliers. As discussed herein, the reasoning provided by Staff for supporting that the Commission delay taking action is unpersuasive and inconsistent with the plain language of the very statute upon which Staff relies.

RGS respectfully submits that with these steps, the Commission will ensure that Ameren’s residential natural gas customers enjoy equitable access to the benefits of competition without unnecessary delay.

IX.

PROPOSED SMALL VOLUME TRANSPORTATION PROGRAM

RGS presented substantial evidence concerning the elements comprising a well-functioning mass market retail natural gas competitive program and the process for formulating a detailed plan for final Commission approval. RGS presented expert witness James Crist, who has over 30 years of experience in energy markets working for regulated utilities and unregulated market participants, with a specialized practice over the past 17 years focusing on regulated and deregulated energy company strategies, market strategies, and regulatory issues. (See RGS Ex. 1.0C at 1:12-16.) Mr. Crist provided an extensive discussion of the benefits of competition to all stakeholders, including consumers and Ameren. (*See, e.g.*, RGS Ex. 1.0C at 8:162-15:338, 19:422-21:466; RGS Ex. 2.0C at 6:118-132, 9:206-12:316, 16:395-17:418; RGS Ex. 2.1.) Mr. Crist also detailed the four “primary elements” necessary for “successful competitive markets”:

- Utility support;
- Purchase of Receivables;
- Fair allocation of commodity-related costs; and
- A properly-adjusted price-to-compare.

(RGS Ex. 1.0C at 25:573-578.) Mr. Crist explained each of these elements in detail, both in pre-filed testimony and during the Evidentiary Hearing. (*See, e.g.*, RGS Ex. 1.0C at 8:162-15:338, 19:422-21:466 (customer benefits); RGS Ex. 2.0C at 6:118-132, 9:206-12:316, 16:395-17:418 (same); RGS Ex. 2.1 (same); Tr. 299:1-300:5, 300:14-19, 304:2-304:25, 307:7-308:21, 309:8-13, 310:15-312:3, 313:11-314:1, 323:11-18, 341:18-342:8 (same); RGS Ex. 1.0C at 26:589-27:619 (utility support); RGS Ex. 2.0C at 4:82-5:112 (same); Tr. 315:18-317:17 (same) RGS Ex. 1.0C at 27:623-31:714 (fair allocation of commodity-related costs); RGS Ex. 2.0C at 15:380-393, 17:420-18:449 (same); RGS Ex. 2.3 (same); Tr. 320:20-321:5 (same); RGS Ex. 1.0C at 32:719-47:1095 (Purchase of Receivables); RGS Ex. 2.0C at 18:451-20:483 (same) Tr. 317:18-319:3, 321:6-322:20 (same); RGS Ex. 1.0C at 47:1099-49:1141 (price-to-compare); RGS Ex. 2.0C at 20:485-496 (same).)

As described in further detail below, the record evidence strongly supports a Commission Order that paves the way for implementation of a mass market choice program and sets up a workshop process that fills in the details around the requirements for a successful competitive market and produces a tariff for Commission approval. The workshop process, which should last no more than six months, should begin using the detailed choice program outline documents provided by Mr. Crist with his testimony, should include all interested stakeholders, and should conclude with Ameren's filing a tariff regarding the choice program with the Commission. Parties will have ample time in that workshop context to work through operational issues, consumer protection and education issues, and cost allocation matters, as well as any other issues of concern to parties. The goal of the workshop should be a mutually acceptable tariff that sets forth the details of the program. Of course, should the workshop participants fail to reach full consensus on all tariff terms, parties will have a potential opportunity to further address them

before the Commission during any review of the tariff after it is presented to the Commission. This proposal represents a fair and appropriate plan that advances the Commission's policy favoring competition and the ability of Ameren residential natural gas customers to gain the same ability to choose as other major energy utility customers in an efficient and timely manner on one hand, while protecting the rights of stakeholders to express views about any particular issues associated with the choice program as it is developed. Thus, RGS's proposal is both reasonable and fully supported by the evidence, and RGS respectfully recommends that the Commission approve its proposal.

A. Potentially Uncontested Issues

It appears that the parties agree that following a Commission Order endorsing the expansion of customer choice to Ameren's natural gas customers, the appropriate next step would be for the Commission to initiate workshops to develop the details for the program. In light of the mass of evidence detailing the benefits of competition for Ameren's residential natural gas customers and the fact that no party provided an alternative structure for a mass market natural gas choice program, RGS recommends that a workshop process to draft a tariff for Commission approval. RGS expert witness Mr. Crist recommended that the Commission initiate a workshop process within a month of the Final Order to last no longer than six months. (*See, e.g.*, RGS Ex. 2.0C at 3:47-51, 22:557-23:567.) Mr. Crist summed up the recommendation as follows:

[G]iven where we are today, where we have established choice programs, both in the other two major utilities in Illinois and certainly in many other states, six months is a reasonable time frame for all the stakeholders, Ameren, suppliers, Commission, customers perhaps, to work through the details necessary to actually propose and launch a program.

(Tr. 327:16-328:1.) Mr. Crist clarified that the end product from the collaborative workshop process would be a tariff, submitted to the Commission by Ameren for approval under normal

Commission procedures. (*See* Tr. 338:16-340:1.) Mr. Crist noted that although collaborative process should cover operational and program design issues, the Commission should state clearly in this docket its support for the competitive market

Ameren has pledged to actively participate in the workshop process, exemplified by an exchange with Ameren witness Mr. Nelson:

Q: . . . [I]f the Commission were to order a workshop process, Ameren would be amenable to that, is that accurate?

A. We participate in workshops that are ordered by the Commission wholeheartedly.

(Tr. 77:16-20.) Ameren has agreed that the issues identified in Ms. Seckler's testimony regarding developing tariffs supporting mass market retail natural gas competition are appropriate for discussion in workshops, and in fact should be addressed. (*See, e.g.*, Tr. 567:13-19.) Indeed, Ameren has stated its view that the workshop process provides a forum in which "all issues identified should be addressed." (Ameren Response to RGS Data Request 5.01, admitted into the record as RGS Cross Ex. 3.) In addition, the Citizens Utility Board has affirmatively stated that it does not oppose a workshop process to formulate a choice program and address issues of concern. (*See* CUB Response to RGS Data Request 4.01, admitted into the evidentiary record as RGS Cross Ex. 10.) Staff did not have a chance to respond to the workshop proposal in written testimony, but did not cross examine RGS expert witness Mr. Crist or propound discovery on RGS challenging Mr. Crist's recommendation.¹ No other party objected to a workshop process.

B. Issues For Discussion In Workshops

If the Commission orders workshops, there are several elements of RGS's mass market natural gas competition proposal that parties have either agreed to, or at least not disputed during

¹ Staff's objection to the timing of the proposed workshop is discussed in Section IX.C *infra*.

testimony or Evidentiary Hearings and thus will not have to be discussed during workshops. No party provided an alternative to RGS expert witness Mr. Crist's list of necessary elements of a well-designed mass market natural gas choice program and some important aspects of Mr. Crist's proposal were either agreed to or not contested. (*See* RGS Ex. 1.0C at 25:573-26:583.) Those aspects include: utility support for the competitive market, full utility cost recovery, and a properly adjusted price-to-compare

- **Utility support for the competitive program.** With regard to the essential elements of a competitive mass market natural gas choice program, parties generally agree or do not dispute that utility support for a competitive program is a critical ingredient. (*See, e.g.*, RGS Ex. 1.0 at 26:589-27:607.) The fact that Ameren has (as described in further detail below) committed to participating in workshops and fully embracing a competitive mass market natural gas choice program if ordered to do so provides valuable assurances for the Commission that this element will be met. (*See, e.g.*, Tr. 77:1-20, 79:13-18; RGS Cross Ex. 2.)
- **Full utility cost recovery for choice program expenses.** Another point of apparent agreement is that no party disputed that Ameren must recovery all of its reasonably and prudently incurred costs in support of the competitive program. (*See, e.g.*, RGS Ex. 1.0 at 27:612-619; RGS Ex. 2.0 at 13:325-329; Tr. 563:17-21.)
- **Fair allocation of commodity-related costs.** Although the parties did not reach agreement about the best method to allocate assets and the assets' costs, no party disputed that the assets should be allocated in a manner that avoids subsidies and reflects cost causation. (*See, e.g.*, RGS Ex. 1.0C at 27:623-29:650; Tr. 577:20-579:8 (Ameren witness Ms. Seckler noting that Ameren did not offer alternatives); *see also* RGS Ex. 2.3 (RGS detailed description of preferred cost allocation structure).)
- **Properly adjusted price-to-compare.** Both Staff and Ameren agreed that a properly adjusted price-to-compare is an important aspect of a properly designed competitive market. (*See, e.g.*, AIC Ex. 35.0 at 17:321-325; Tr. 563:22-564:3 (Ameren witness Ms. Seckler); Staff Ex. 34.0 at 4:82-5:96.) Although Ameren argued that RGS's proposal did not have sufficient detail, Ameren expert witness Ms. Seckler stated that the mechanics of the price-to-compare would be appropriate for the workshop process. (*See* Tr. 569:13-570:3.). RGS agrees with that the workshop process could be used to address price-to-compare issues.

Although the parties agree on significant portions of the content of a mass market retail natural gas choice program, the parties still have a number of issues to resolve in the workshop process. The parties either agree to or do not oppose discussing all open issues in workshops,

should the workshops be ordered. (*See, e.g.*, Tr. 567:9-570:12 (Ameren witness Ms. Seckler); Tr. 609:21-610:2 (Staff witness Dr. Rearden noting that there “you don’t need any details to begin a workshop”).)

Because no other party has presented evidence promoting different necessary components of a well-designed mass market retail natural gas choice program, RGS urges the Commission to adopt RGS’s proposal as the starting point of discussions in its Order. (*See, e.g.*, Tr. 578:9-579:12 (Ameren witness Ms. Seckler noting that neither Ameren, nor any other party to her knowledge, provided alternative proposals).) The Commission has used this approach to workshops before to resolve mass market natural gas competitive issues in Peoples and North Shore’s 2009 Rate Case. In that matter, the Commission found that the utilities did not fully engage supplier proposals presented by Mr. Crist (on behalf of alternative gas suppliers) regarding the Nicor Gas model:

The Commission directs the Utilities to come to the workshops prepared to discuss [the program] presented by Mr. Crist. The Utilities should be prepared to explain which parts are appropriate for their program, which are not, and why they are not. For those parts of the [program Mr. Crist presented] that the Utilities believe are not appropriate for their program, they will come prepared to present alternatives to address the issues raised by RGS.

The workshops will cover all the small volume transportation program issues. (ICC Docket No. 09-0166/-0167 (Cons.) Final Order dated January 21, 2010 at 253; *see also id.* at 253-254 (holding that “issues to be discussed at the workshops will be how to implement these changes, and not whether they should be implemented.”).) A targeted focus on RGS’s proposal still allows parties to discuss all relevant issues, but avoids the inefficiency of starting from scratch when the parties could have raised alternative proposals in the present docket. (*See, e.g.*, Tr. 338:16-340:13.) This approach strikes a balance, as it did in the Peoples/North Shore case. On one hand, it resolves operational and program design issues in a timely manner by not

wasting time on the already-litigated question of the basic outlines of the program (or whether the program should exist at all). (*Compare* ICC Docket No. 09-0166/-0167 (Cons.) Final Order dated January 21, 2010 at 253-254 *with* Tr. 334:11-335:14, 338:16-340:13.) On the other hand, in the same way that the Peoples/North Shore workshop changes were introduced as proposals by the utilities in their next rate case, interested stakeholders here will both have an opportunity to persuade fellow stakeholders during workshops and -- if unsuccessful in that forum -- persuade the Commission of alternative operational or program design choices. (*See, e.g.*, 338:16-340:13.)

C. There Is No Reason To Delay The Commencement Of Workshops For The ORMD Report

Although neither Ameren nor CUB (nor any other party except Staff) oppose the initiation of workshops within one month of the Final Order in this matter, Staff appears not to support RGS's proposed timing. Instead, in its testimony Staff recommended that the Commission wait until the Office of Retail Market Development ("ORMD") releases its report on the natural gas market pursuant to Section 19-130 of the Act ("ORMD Report"). (*See, e.g.*, Staff Ex. 34.0 at 5:1-7-6:118; Tr. 614:3-18.) Staff raised three concerns in support of its position -- there is insufficient evidence of empirical benefit of competition in the record, RGS's proposals lack detail, and the ORMD report is pending -- but none of Staff's concerns justify delay. (*See* Staff Ex. 34.0 at 5:99-6:110.) There is no need for the Commission to postpone the initiation of the workshop process, because all of Staff's concerns are either already addressed by the record in this docket or can be resolved in the workshop process.

1. There Is Substantial Evidence That Mass Market Retail Natural Gas Competition Benefits Consumers

Staff's first concern was that there was insufficient "empirical" evidence of the benefits of natural gas choice. (*See, e.g.*, Staff Ex. 34.0 3:57-61, 5:104-105; Tr. 610:21-611:1.) RGS

expert witness Mr. Crist has provided or cited to a substantial volume of evidence about the value and benefits of mass market natural gas choice. (*See, e.g.*, RGS Ex. 1.0C at 8:163-16:351; RGS Ex. 2.0C at 7:165-12:316; RGS Ex. 2.1.) Notably, Mr. Crist cited to both the Commission's 2007 and 2005 reports on the state of the retail natural gas competitive market, which consisted of empirical observations about the Illinois market, as well as empirical observations from other states in the form of Energy Information Agency ("EIA") and Ohio's experience. (*See, e.g.*, RGS Ex. 1.0C at 7:154-8:160 (EIA), 12:267-269, 14:300-303, 15:327-331, 21:472-23:527 (Commission reports on natural gas competition); RGS Ex. 2.0C at 7:166-8:198 (EIA) 9:219-11:280 (Commission reports on natural gas competition), 12:299-316 (Ohio experience); RGS Ex. 2.1 (Ohio experience).) Further, on cross-examination, Mr. Crist noted that IGS has been recognized for offering products in Illinois that are below the utilities' PGA rates. (*See* Tr. 342:9-343:7.) This is all empirical evidence, *i.e.*, evidence "originating in or relying or based on factual information, observation . . . as opposed to theoretical knowledge." (Webster's Third New International Dictionary 743 (3d ed. 1981).)

Mr. Crist provided the best evidence available. As Mr. Crist acknowledged, because it is impossible to predict the utilities' PGA rate, it is impossible to quantify dollars and cents customer savings. (*See* Tr. 301:21-303:16.) Moreover, some of the value of a choice program is that customers will have access to a variety of risk-reducing products whose benefits cannot be measured by price differential in any given time period. (*See, e.g.*, RGS Ex. 2.0C at 11:283-295; Tr. 298:19-300:5; *see also* Staff Ex. 34.0 at 3:62-65 (Staff witness Dr. Rearden acknowledging variety of products as a benefit of competition).) It is clear that RGS has provided voluminous evidence of the benefits of mass market retail natural gas competition.

2. RGS's Framework Should Frame The Discussions To Begin The Workshop Process

Staff's second basis was that RGS did not provide sufficient detail for its plan to enact a mass market natural gas choice program. (*See* Staff Ex. 34.0 at 5:103-106.) Dr. Rearden's position is summed up by his statement that: "A general rate case like this docket hardly allows for the comprehensive exchange of information needed to produce an entirely new tariffed service offering." (*Id.* at 5:104-106.) However, Dr. Rearden's statement (which was made before RGS recommended a workshop process) underscores the value of the workshop process that RGS recommends. As Dr. Rearden explained on cross, "You don't need any details to begin a workshop." (Tr. 610:1-2.) Importantly, because other parties have expressed willingness to participate in the workshop process (including Ameren and CUB), and Mr. Crist explicitly requested Staff's presence, the workshop process should facilitate the necessary exchange of ideas and proposals to create a tariff that benefits all mass market customers. (*See, e.g.,* RGS Ex. 2.0C at 23:561-567 (requesting participation of Staff); Tr. 77:16-20 (Ameren would participate "wholeheartedly" if workshops ordered); RGS Cross Ex. 9 (CUB stating it is not opposed).) Mr. Crist did present language included as exhibits in his rebuttal testimony (namely RGS Ex. 2.2 and RGS Ex. 2.3) that does provide the level of detail necessary for supporting a tariff filing. (*See, e.g.,* RGS Exs. 2.2 and 2.3; Tr. 331:7-332:2.) As described above, workshops are an appropriate venue for finalizing details for all open issues. Thus, any lack of detail from Mr. Crist's testimony can -- and should be -- resolved in the workshop process.

**3. The Commission Should Not Wait For The
ORMD To Release Its Report Pursuant To Section
19-130 Of The Act To Order Development Of A Choice Program**

Finally, the fact that the ORMD has been directed by the General Assembly to develop a natural gas choice report is not a valid reason for delaying the workshops. There is absolutely nothing in the legislation that suggests the Commission should defer this decision until the ORMD submits its report; to the contrary, the legislation is entirely consistent with the Commission directing workshops to commence immediately. Moreover, the process and timing for the ORMD to develop this report is entirely unknown.

Staff correctly concedes that Section 19-130 does not prevent the Commission from ordering workshops or approving tariffs for a mass market natural gas competition program. (*See, e.g.*, Tr. 614:3-9, 614:19-615:1.) As Ameren witness Ms. Seckler testified, Section 19-130 requires identification and removal of barriers to competition. In short, the ORMD's development of its report would be facilitated by the Commission initiating workshops at the conclusion of the instant proceeding to develop Ameren's mass market customer choice program. (*See* Tr. 573:7-574:6.) Section 19-130 states:

The Commission's Office of Retail Market Development shall prepare an annual report regarding the development of competitive retail natural gas markets in Illinois. . . . The report shall include, at a minimum, the following information:

- (1) **an analysis of the status and development of the retail natural gas market** in the State of Illinois; and
- (2) **a discussion of any identified barriers to the development of competitive retail natural gas markets in Illinois and proposed solutions to overcome identified barriers**; and
- (3) any other information the Commission considers significant in assessing the development of gas markets in the State of Illinois.

To aid in preparation of its annual report, as well in its **assessment of barriers** to the development of competitive retail natural gas markets **and proposed solutions to overcome those barriers**, the Commission's Office of Retail Market

Development shall gather input from all interested parties as well as from other bureaus within the Commission.

(220 ILCS 5/19-130 (effective 1-1-12) (emphasis added).) As Dr. Rearden clarified on the stand, he did not opine that the Commission cannot order workshops or approve a tariff, noting that “I’m just recommending the Commission wait for that report.” (Tr. 614:22-615:1.)

However, Section 19-130’s plain language counsels for the exact opposite approach. Section 19-130 quite plainly embodies the General Assembly’s clear expectation that there should be competitive natural gas markets in Illinois. The statute repeatedly calls for the ORMD report to identify “barriers to the development of competitive retail natural gas markets of Illinois.” It also repeatedly calls for ORMD to identify “proposed solutions to overcome those barriers.” That language communicates a clear expectation that there should be a competitive market now and that the ORMD report is intended to identify any reasons that there is not a competitive market or any problems that are impeding the development of that competitive market, along with remedies for any such problems. *Nothing* in Section 19-130 suggests any intention by the General Assembly to constrict the development of the competitive market in any respect, and certainly nothing communicates an intention to wait for the issuance of the ORMD report before implementation of choice. On the contrary, the statute *assumes* that choice is being actively implemented and identifies the ORMD report as a tool to identify reasons that the competitive market might not be developing quickly enough.

Thus, respectfully, it is ironic that Staff relies on Section 19-130 as the basis to slow down the development of retail competition in Ameren’s service territory. Staff’s recommendation to wait for some future report actually creates exactly what Section 19-130 requires the ORMD to identify: a barrier “to the development of competitive retail natural gas

markets in Illinois.” The Statute is *not* intended to slow the process, and a recommendation to read it in that manner is unpersuasive and inaccurate.

Of course, moving forward with implementation of a mass market choice program now in Ameren’s service territory will further the statutory goal of allowing ORMD to identify barriers to competition and propose resolution to those barriers in the report, rather than dealing with theoretical (non-empirical) issues in the Ameren service territory. As RGS expert witness Mr. Crist testified (though not in the context of the ORMD report), creating a competitive market is an iterative process:

We really need to get the issues resolved to the point where a program can be launched, but I can tell you this. It is not like you pick a point in time and say this is the program and we are never going to change it or improve it. We will find, and Ameren will, I am sure, experience this, if they launch a program after six months, there may be aspects of that program that need revision after a year or two years. So it is kind of a continuous improvement type process.

(Tr. 328:4-13.) While the ORMD report can aid this process, the report should be seen as a supplement, rather than a prerequisite. Again, it makes little sense to use Section 19-130 -- which seeks to identify and eliminate barriers to competition -- as a barrier itself by imposing an arbitrary limit on when natural gas competition can move forward.

Further, Staff presented absolutely no evidence of how the process for developing and drafting the ORMD report will work and blocked RGS’s repeated attempts to obtain further details. Dr. Rearden acknowledged that he has no idea what the scope, content, or timing will be of the ORMD report, or whether Staff will even participate. (*See, e.g.*, Tr. 615:4-20, 617:10-618:5; RGS Cross Ex. 8.) When RGS sought to cross-examine the Director of the ORMD -- whom Staff itself had presented as a witness on other issues -- Staff used procedural maneuvers to block such questioning. (*See* Sept. 16, 2011 Staff Motion in Limine; Tr. 968:2-976:9.) In light of the scope of Section 19-130 described above, it would not make sense to delay the

workshop process or the filing of a tariff resulting from that workshop process when Staff cannot articulate a benefit from further delay.

RGS respectfully recommends that the Commission approve a workshop process within the timeframe suggested by RGS expert witness Mr. Crist, namely within one month of the Final Order, to last no longer than six months. (*See, e.g.*, RGS Ex. 2.0C at 22:557-560.)

XI.

CONCLUSION

The Commission has an opportunity to bring competitive markets -- and all of the related benefits -- to the last customer group among the state's largest utilities that still cannot avail itself of those opportunities. As RGS expert witness Mr. Crist summed up:

It would be entirely consistent with the pro-competitive goals of the Commission and the General Assembly for the Commission to direct Ameren to implement a mass market gas choice program. The Commission has previously approved gas mass market choice programs in other Illinois gas utility service territories and can and should do so in Ameren's territory.

(RGS Ex. 2.0C at 5:108-112.) Developing a mass market natural gas choice program will benefit all parties involved, consistent with the Commission's policy favoring competition. In light of the benefits of competition, RGS has outlined the necessary components for a program to make sure those benefits are unlocked, and requested that the Commission initiate a workshop process to build tariffs to achieve the Commission's pro-competitive goals. The Commission should limit the workshop process to six months, which should provide time sufficient to work out the details of the program, and direct Ameren to file a tariff for Commission approval at the conclusion of the workshop process.

WHEREFORE, IGS respectfully requests that the Commission enter an Order:

1. Requiring Ameren to establish up a mass market natural gas competitive market;

2. Initiating, within on month of the Final Order, a workshop process to last no longer than six months, using as a starting point RGS's outline of the necessary components of competition and RGS's explanation of those elements, including the language in RGS Ex. 2.2 and 2.3 to produce a tariff for Ameren to present for Commission approval at the conclusion of the workshop process;
3. Granting any additional relief that the Commission determines to be in the interests of justice.

Respectfully submitted,

THE RETAIL GAS SUPPLIERS

By: /s/ Christopher J. Townsend
One Of Its Attorneys

Christopher J. Townsend
Christopher N. Skey
Michael R. Strong
DLA Piper LLP (US)
203 N. LaSalle Street, Suite 1900
Chicago, IL 60601
christopher.townsend@dlapiper.com
christopher.skey@dlapiper.com
michael.strong@dlapiper.com